



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

**URGENT LEGAL MATTER
REQUIRES PROMPT RESPONSE**

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

JUL - 3 2013

Myles Standish, President
Newport Biodiesel, Inc.
312 Connell Highway
Newport, RI 02840

RE: Notice of Violation and Reporting Requirement

Dear Mr. Standish:

The United States Environmental Protection Agency ("EPA") is issuing the enclosed Notice of Violation ("NOV") to Newport Biodiesel, Inc. ("Newport Biodiesel"), located at 312 Connell Highway in Newport, Rhode Island, for violations of the Clean Air Act ("CAA" or "the Act").

Specifically, Newport Biodiesel violated: 1) the National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) found at 40 CFR Part 63, Subpart EEEE ("OLD"); 2) the National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing found at 40 CFR Part 63, Subpart FFFF ("MON"); and 3) Title V operating permit requirements of the Act. This NOV is issued under the authority of Section 113 of the Act, 42 U.S.C. § 7413 and is included as an enclosure to this letter.

In addition, this letter inquires further about Newport Biodiesel's compliance with a number of environmental statutes including the CAA. The first section of the letter describes concerns about Newport Biodiesel's compliance with Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1) (otherwise known as the General Duty Clause)¹ and Sections 311 and 312 of Emergency

¹ The General Duty Clause requires owners and operators of stationary sources that produce, process, handle, or store extremely hazardous substances to (1) identify hazards which may result from accidental releases using appropriate hazard assessment techniques, (2) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (3) minimize the consequences of accidental releases which do occur. Among the chemicals stored and used at the facility are methanol, sodium methylate, and sulfuric acid, which would be considered extremely hazardous substances.

Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. §§ 11021 and 11022.² The second section of the letter asks a number of additional questions about Newport Biodiesel's compliance with the CAA. The third section asks a number of questions about Newport Biodiesel's compliance with the Clean Water Act.

Clean Air Act General Duty Clause and Emergency Planning and Community Right-to-Know Act

EPA has identified a number of potential violations of the General Duty Clause and EPCRA, and advises Newport Biodiesel to review its compliance with these laws. Specifically, it appears Newport Biodiesel has failed to:

- Submit chemical inventory forms (Tier II forms) and Material Safety Data Sheets (now called Safety Data Sheets) to EPA, as required by EPCRA Sections 311 and 312, for hazardous chemicals present at the facility. These chemicals include but are not limited to methanol, sodium methyle, biodiesel, and glycerin.
- Identify hazards using appropriate hazard techniques, as required by the General Duty Clause³.
- Design and maintain a safe facility, as required by the General Duty Clause. In particular:
 - The facility does not appear to have an adequate fire suppression system in areas of the facility where flammable and combustible materials are stored.
 - Tanks and pipes containing flammable or other hazardous substances do not appear to be labeled appropriately.
 - Although sodium methyle is a water-reactive chemical, the facility does not appear to have posted appropriate warning signs or conducted a proper hazard analysis in coordination with applicable industry codes and standards.

This list is preliminary and may be revised as EPA completes its EPCRA and General Duty Clause investigation. Moreover, notice of these potential violations does not preclude EPA from taking further enforcement action with regard to these or other potential violations.

Clean Air Act Reporting Requirement

As EPA continues to evaluate Newport Biodiesel's compliance with the Act, EPA is also issuing Newport Biodiesel the following Reporting Requirement. Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1), gives EPA the authority to require any person who owns or operates any emission source to establish and maintain records, make reports, sample emissions, and provide such other information as may reasonably be required to enable EPA to determine whether a

² These provisions of EPCRA require owners and operators of facilities to provide certain information about their hazardous chemicals to the local emergency planning committee, state emergency response commission, and local fire department.

³ EPA's General Duty Clause guidance provides information on the methodology that should be used to conduct a proper hazard analysis and can be found at <http://www.epa.gov/osweroe1/docs/chem/gdcregionalguidance.pdf>.

facility is in compliance with the Clean Air Act. This reporting requirement orders Newport Biodiesel to provide specific information about its biodiesel production plant.

Within 30 calendar days of receiving this letter, Newport Biodiesel is required to:

1. Provide a list of all process equipment at the facility including but not limited to:
 - a. process reactors;
 - b. process tanks (including decant and settling tanks);
 - c. storage tanks; and
 - d. boilers.
2. Provide the following information for the equipment identified in Question 1:
 - a. name and brief description of the equipment;
 - b. actual design capacity and/or storage capacity of the equipment;
 - c. date of purchase;
 - d. cost of equipment; and
 - e. date of installation;
3. Provide copies of all correspondence Newport Biodiesel has had with state and/or federal environmental agencies regarding emissions of air pollution at its facility, including, but not limited to, copies of:
 - a. All email or written correspondence with Rhode Island Department of Environmental Management;
 - b. All permit applications;
 - c. All permits issued; and
 - d. Any requests for permit modifications.
4. Provide copies of all receipts/tickets that indicate the quantity of B99 or B100 for sale to privately/publically owned vehicles, use in a boiler or another unit for process heat, and for use in Newport owned vehicles.
5. Provide copies of all laboratory analysis conducted on-site or at off-site laboratories. If an off-site laboratory is used, please include contact information for that laboratory.
6. Provide all electronic spreadsheets with production-sales records. Provide a description of any and all categories of uses, intended use, or renewable fuel designation in that electronic spreadsheet. Please include electronic spreadsheets with file names:
 - a. 2010 Production-Sales Record.xls;
 - b. 2011 Production-Sales Records.xls; and
 - c. 2012 Production-sales Record.xls.

Clean Water Act Reporting Requirement

In addition, to determine compliance with the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112, promulgated under Section 311 of the Clean Water Act, 33 U.S.C. § 1321, you are

required under the authority of Sections 308 and 311(m) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1321(m), to submit to EPA within 30 calendar days of your receipt of this letter the following:

1. Provide a list of all the oil storage capacity at the Facility, both underground and aboveground (including, tanks, drums, transformers, oil-filled systems, etc.) and the type of oil stored in each container. Indicate each container's age and method of construction (e.g., single or double wall, welded or riveted, steel or fiberglass). Also indicate whether any secondary containment is provided around each container, and, if so, its method of construction (earth berm, steel wall, concrete block wall, poured concrete wall) and the total volume it can contain. Under 40 C.F.R. § 112.2, "oil" is defined as oil of any kind or in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.
2. Provide the date the Facility first started having the capacity to store oil above the Spill Prevention Control and Countermeasure ("SPCC") regulatory thresholds set forth in 40 C.F.R. § 112.1(d)(1) (i.e., the SPCC-regulated underground oil storage capacity of the Facility is greater than 42,000 gallons -or- the aboveground oil storage capacity of the Facility is greater than 1,320 gallons).
3. Provide the date the Facility first began operation and, if different, the date the current owner took over ownership of the Facility. If the Facility is operated by an entity other than the owner, also include the date the current operator took over operation of the Facility.
4. Provide a site diagram which shows how storm water flows over the Facility site. Include all catch basins located on or near the Facility. Include the nearest surface waters on the site diagram.
5. If you believe that your Facility is not subject to the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112, and is therefore not required to have a SPCC Plan, provide an explanation supporting such determination, including appropriate documentation.
6. If your Facility has an SPCC Plan, or is in the process of creating its SPCC Plan, provide a copy of your Facility's SPCC Plan. If completion of the SPCC Plan is not feasible within 30 calendar days, submit a detailed schedule of when it will be completed and fully implemented. The schedule should include the name, address, license number, and state of licensure of the registered professional engineer certifying the SPCC Plan. If the SPCC Plan calls for the construction of secondary containment at the Facility, the schedule should include construction milestone dates.

Mail the submissions required by this letter to:

Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

5 Post Office Square, Suite 100, OES04-2
Boston, MA 02109-3912
Attn: Darren Fortescue, Air Technical Unit (Mail Code OES04-2)

Be aware that if Newport Biodiesel does not provide the requested information in a timely manner, EPA may order it to comply and may assess monetary penalties under Section 113 of the Act, 42 U.S.C. § 7413. Federal law establishes criminal penalties for providing false information to EPA. This letter is not subject to Office of Management and Budget review pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

You may, if desired, assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 CFR § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR Part 2, Subpart B. Note that certain categories of information, such as emissions data, are not properly the subject of such a claim. If no such claim accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice. Please be aware that states may have different regulations governing the protection of confidential business information.

If you have any questions regarding this letter, please contact Darren Fortescue, Environmental Engineer, at (617) 918-1162, or have your attorney call Thomas T. Olivier, Senior Enforcement Counsel at (617) 918-1737.

Sincerely,

Sam Silverman, acting for

Susan Studlien, Director
Office of Environmental Stewardship

Enclosure: Newport Biodiesel, Inc. NOV

cc: Ted Burns, RI DEM

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I – NEW ENGLAND**

IN THE MATTER OF

Newport Biodiesel, Inc.
312 Connell Highway,
Newport, Rhode Island 02840

Proceeding under Section
113 of the Clean Air Act

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NOTICE OF VIOLATION

STATUTORY AUTHORITY

1. The United States Environmental Protection Agency, Region I (“EPA”) issues this Notice of Violation (“NOV”) to Newport Biodiesel, Inc. (“Newport Biodiesel”), for violations of the Clean Air Act at its facility located on 312 Connell Highway in Newport, Rhode Island. Specifically, EPA has identified violations of: 1) the National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) found at 40 CFR Part 63, Subpart EEEE (“OLD”); 2) the National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing found at 40 CFR Part 63, Subpart FFFF (“MON”); and 3) Title V operating permit requirements.
2. This NOV is issued under Section 113 of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. §7413.

BACKGROUND INFORMATION

3. Newport Biodiesel produces biodiesel, using components such as methanol and used cooking oil, at its Connell Highway facility (“Facility”).

4. Newport Biodiesel started construction at the Facility in June 2007 and began selling biodiesel in January 2008.
5. On March 5 and 6, 2013, EPA inspectors performed an inspection at the Facility.
6. Newport Biodiesel uses methanol in the biodiesel production process.
7. Sections 112(b)(1) of the CAA, 42 U.S.C. §§7412(b)(1), lists methanol as a hazardous air pollutant (“HAP”).
8. Sections 112(a)(1) and 501 of the CAA, 42 U.S.C. §§7412(a)(1) and 7661, define the term “major source” to include any source that has the potential to emit more than 10 tons per year of any HAP or more than 25 tons per year of a combination of HAPs.

FACTUAL BASES, LEGAL FINDINGS, AND NOTICE OF VIOLATION

9. Based on information provided by Newport Biodiesel during the inspection on March 5 and 6, 2013, the EPA has determined that the Facility has the potential to emit more than 10 tons per year of a single HAP, methanol, and thus is a major source.

A. Violations of 40 CFR Part 63, Subpart EEEE

10. Newport Biodiesel owns and operates a non-gasoline organic liquids distribution operation as described in 40 CFR §§63.2330 and 63.2334.
11. The OLD applies to non-gasoline organic liquids distribution operations at any affected source that is a major source of HAPs. See 40 C.F.R. §63.2334(a).
12. According to 40 CFR §§63.2 and 63.2338(d) of the OLD, a “new affected source” is an affected source for which construction commenced after April 2, 2002. Therefore Newport Biodiesel is a new affected source for the purposes of the OLD.
13. According to 40 CFR. §63.2342(a)(2), new affected sources that commence

construction after February 3, 2004, must comply with the OLD upon startup.

14. According to 40 CFR §63.2382(b)(2), new affected sources must submit an initial notification to EPA no later than 120 days after startup.

15. Newport Biodiesel has not submitted an initial notification to EPA.

16. According to 40 CFR §63.2382, facilities required to conduct a performance test, design evaluation, or other initial compliance demonstration must submit a notification of compliance status either within 240 days after the compliance date or 60 days after the last performance test. The notification of compliance status report must include the information required in 40 CFR §§63.999(b) and in 63.2382(d)(2)(i) through (viii).

17. Newport Biodiesel has not submitted a notification of compliance status report to EPA.

18. According to 40 CFR §63.2386(b), facilities must submit compliance reports covering the semiannual reporting period from January 1 through June 30 and for the semiannual reporting period from July 1 through December 31. Newport Biodiesel's compliance date was January 31, 2008. Therefore the first compliance report covered the period from January 31, 2008 through June 30, 2009, and was due no later than July 31, 2009. Subsequent compliance reports were to be submitted no later than July 31 and January 31, following the end of each semiannual reporting period.

19. Newport Biodiesel has not submitted the required compliance reports.

B. Violations of 40 CFR Part 63, Subpart FFFF

20. Newport Biodiesel produces materials as identified by 40 CFR §63.2435(b)(1). The process used by Newport Biodiesel to produce these materials is a miscellaneous organic

chemical manufacturing process (“MCP”), as defined by 40 CFR §63.2550.

21. A miscellaneous organic chemical process unit (“MCPU”) includes equipment necessary to operate the MCP and associated items such as storage tanks and pumps, as outlined at 40 CFR §63.2435(b).
22. Newport Biodiesel operates a MCPU to produce biodiesel.
23. The MON applies to any affected source that is a major source of HAPs and owns or operates a MCPU. See 40 C.F.R. §63.2435(a).
24. According to 40 CFR §§63.2 and 63.2440(c) of the MON, a “new affected source” is an affected source for which construction commenced after April 4, 2002. Therefore Newport Biodiesel is a new affected source for the purposes of the MON.
25. According to 40 CFR §63.2445(a)(2), new affected sources that start up after November 10, 2003, must comply with the MON upon startup.
26. According to 40 CFR §63.2515(b)(2), new affected sources such as Newport Biodiesel must submit an initial notification to EPA no later than 120 days after becoming subject to the MON.
27. Newport Biodiesel has not submitted an initial notification to EPA.
28. According to 40 CFR §63.2520(c), new affected sources must submit a precompliance report to EPA with the application for approval of construction or reconstruction. The precompliance report must contain the information required by 40 CFR §63.2520(c)(1) through (7).
29. Newport Biodiesel has not submitted a precompliance report to EPA.
30. According to 40 CFR §63.2520(d), new affected sources must submit a notification

of compliance status report to EPA no later than 150 days after startup. The notification of compliance status report must contain the information required by 40 CFR §63.2520(d)(2).

31. Newport Biodiesel has not submitted a notification of compliance status report to EPA.

32. According to 40 CFR §63.2520(b), facilities must submit compliance reports covering the semiannual reporting period from January 1 through June 30 and for the semiannual reporting period from July 1 through December 31. Newport Biodiesel's compliance date was January 31, 2008. Therefore the first compliance report covered the period from January 31, 2008 through June 30, 2009, and was due no later than August 31, 2009. Subsequent compliance reports were to be submitted no later than August 31 and February 28, following the end of each semiannual reporting period.

33. Newport Biodiesel has not submitted the required compliance reports.

C. Violation of Title V Operating Permit Requirements

34. Within 12 months of becoming subject to the OLD and the MON, Newport Biodiesel was required to apply for a Title V operating permit pursuant to Sections 502(a) and 503(c) of the CAA, 42 U.S.C. §§ 7661a(a) and 7661b(c), and 40 C.F.R. Part 70.5.

35. To date Newport Biodiesel had not applied for or obtained a Title V operating permit, in violation of CAA Sections 502(a) and 503(c), 42 U.S.C. §§ 7661a(a) and 7661b(c).

ENFORCEMENT

36. Following the issuance of this NOV EPA may take any or all of the following actions: (a) issue an order requiring compliance with the Act; (b) issue an administrative penalty order; or (c) bring a civil action in federal district court for an injunction and/or monetary penalties up to \$37,500 per day for each violation. See Sections 113(a), (b) and (d) of the Act, 42 U.S.C. §§ 7413(a), (b) and (d), and 40 C.F.R. Part 19 as amended by 73 Fed. Reg. 75340-46 (Dec. 11, 2008) (Clean Air Act judicial and administrative penalties raised from \$25,000 to \$37,500 effective January 12, 2009).

37. If Newport Biodiesel has knowingly violated the requirements of the Act, Newport Biodiesel and its responsible corporate officers may be subject to criminal penalties under Title 18 of the United States Code, imprisonment for not more than five years, or both. See Section 113(c) of the Act, 42 U.S.C. § 7413(c).

38. Be advised that issuance of this NOV does not preclude EPA from electing to pursue any other remedies or sanctions authorized by law that are available to address these violations.

OPPORTUNITY TO CONFER

39. If Newport Biodiesel has any questions regarding this NOV, please contact environmental engineer Darren Fortescue at (617) 918-1164, or have your legal counsel contact Thomas T. Olivier, Senior Enforcement Counsel, at (617) 918-1737. Newport Biodiesel may request an opportunity to confer with EPA by contacting Mr. Fortescue or Mr. Olivier at the phone numbers listed above.

EFFECTIVE DATE AND APPLICABILITY

40. This NOV is effective as of the date signed below and applies to Newport Biodiesel and its officers, agents, servants, employees, successors, and assigns, and to all persons, firms, and corporations acting under, through, or for Newport Biodiesel. This NOV is not subject to Office of Management and Budget review under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Susan Studlien, acting for
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I – New England

7-3-13
Date